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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 February 1990, at 10 a.m.

Chairman: Mrs. QUISUMBING (Philippines)

later: Mrs. REGAZZOLI (Argentina)

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The meeting was called to order at 10.15 a.m.

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (agenda item 23) (continued) (E/CN.4/1990/46; E/CN.4/1990/NGO/5 and E/CN.4/Sub.2/1989/32)

1. Mr. ZUNIGA (International Association of Educators for World Peace) said that his organization had always considered education to be central to efforts for peace, respect for human dignity and understanding among peoples. Religious movements had historically launched many educational efforts, though religious orthodoxy had often tried to keep the human spirit within narrow walls. Faith was, however, best served by freedom of thought and discussion, and not by intolerance.

2. His organization had, at the forty-fifth session of the Commission, raised the question of the repression of the religious freedom of the Tibetans, a question it was bound to touch upon again at the current session. Religious freedom had been suppressed in Tibet since 1949, when China had taken effective control of the country. Monasteries had been destroyed and monks and nuns had been placed in labour camps.

3. On 7 March 1989, martial law had been imposed. As monks and nuns had been in the forefront of those calling for reforms and respect of human rights, many had been arrested. Monasteries had become the scene of "re-education" sessions imposed upon monks and nuns. Police informers and spies had been infiltrated into some monasteries, and the major monasteries around Lhasa had been surrounded by military and police forces.

4. Religion and national identity were inseparable for the Tibetans, who regarded monasteries as their only possibility of receiving an education in the Tibetan language and culture. The more restrictions the Chinese placed on the monasteries, the greater the Tibetan resistance became. Buddhist values of compassion and an understanding of the impermanence of all things had kept efforts for greater freedom non-violent, and the Dalai Lama had been awarded the Nobel Peace Prize for his non-violent work.

5. It was important to help make those non-violent efforts more effective by constant attention to the situation in Tibet and by urging the Chinese authorities to modify their policy so as to ensure respect for the principles of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief.

6. Mr. TARASSIOUK (Ukrainian Soviet Socialist Republic) said that his delegation agreed with the conclusion reached by the Special Rapporteur in his report (E/CN.4/1990/46) on the need to elaborate an international instrument binding on the States parties on the elimination of all forms of intolerance and of discrimination on the basis of religion or belief. It also supported his call for States which had not already ratified the relevant international instruments to do so, making provision, in accordance with the norms laid down by those instruments, for the necessary constitutional and legal guarantees for freedom of thought, conscience, religion and belief.

7. Although the report had referred positively to the measures taken in the Soviet Union and other Eastern European States in the area of religious freedom and belief, the significant improvement in relations between church

and State, the dialogue with the Roman Catholic Church and Mr. Gorbachev's visit to the Vatican, his delegation wished to provide more details on the implementation of the Declaration in the Ukrainian SSR.

8. More than 8,000 different religious associations were currently registered in the Ukrainian SSR, that total having increased by 50 per cent over the past two years. Only recently, a religious seminar of the Russian Orthodox Church had been held at Kiev, a number of monasteries had been opened, and a centre had been established for Seventh Day Adventists. Religious associations regularly received Bibles and other religious material from abroad, and they also issued newspapers, journals and other publications. Contacts had been growing with religious associations around the world, and, in 1989, several thousand religious personalities from many countries had visited the Ukraine.

9. His Government had taken measures to ensure strict compliance with the provisions of the Constitution of the Ukrainian SSR on freedom of conscience and on implementing existing international standards in that area. In particular, justice had been restored in the treatment of Eastern Rite Catholics, who had been deported during the Stalinist period. They could currently form their own religious associations, legally register them, practise their religion freely and enjoy all the rights guaranteed by law for religious associations in the Ukrainian SSR. His Government was also working towards normalizing relations between the Russian Orthodox Church and Eastern Rite Catholics, and in that context, it was pleased to note the holding, in January 1990 in Moscow, of talks between representatives of the Russian Orthodox Church and the Vatican to discuss problems regarding Eastern Rite Catholics in the western Ukraine. The communiqué that had emerged from that meeting had welcomed the normalization process in church life in the Soviet Union and had expressed the conviction that the Russian Orthodox and Catholics could make their contribution to building a State based on the rule of law.

10. His Government would continue to take the necessary steps to ensure implementation of its international obligations in the area of religious rights and freedoms.

11. Mr. CESKA (Observer for Austria) said that his delegation considered freedom of thought, conscience, religion and belief to be an essential pre-condition for the safeguarding of spiritual well-being and human dignity. Disregard for religious rights could lead and, as experience showed, often had led to the violation of other fundamental human rights.

12. The profound changes currently taking place in a number of European countries included an improvement in constitutional and legal systems and increased respect for the rights embodied in them. The best guarantee for a climate conducive to tolerance and mutual understanding was to be found in effective democratic institutions that enabled individuals to express their beliefs and convictions freely. His delegation welcomed the positive developments in those countries in the field of human rights, which were a great step forward towards full implementation of the provisions of the Helsinki Final Act and the concluding documents of the Conference on Security and Co-operation in Europe (CSCE).

13. It was to be hoped that further progress would be made on the right of everyone to provide and to receive religious education and the right of

individual believers and communities to acquire the necessary religious materials and to have greater access to the mass media. The achievements of the CSCE process might serve as a useful example to other regions of the world.

14. It was regrettable that provisions in national laws and Government practices were often in contradiction with the Declaration, and manifestations of fanatical opinions were tolerated or encouraged by Governments, even when they paved the way to intimidation, torture and murder.

15. In that context it was unfortunate that once again, 12 Governments had chosen not to reply to the queries of the Special Rapporteur and that other Governments had made no mention in their replies of difficulties that they might have experienced in implementing that basic right. Furthermore, some of the answers were completely inadequate. The role of the Special Rapporteur should not be seen as that of a public prosecutor indicting the accused; his task was to assess situations and suggest remedies, where appropriate.

16. While his delegation shared the Special Rapporteur's concern about the difficulties frequently faced by foreigners who held religious beliefs different from those held by the majority of the people in their State of residence, it cautioned against speaking of "reciprocity", an ambiguous concept that would hardly serve the cause of religious freedom if it were applied in a negative sense.

17. His delegation agreed with the Special Rapporteur that the international community might usefully draw upon the principles laid down in the 1981 Declaration, as well as on practical experience acquired in recent years by the Commission, to draft a binding international instrument that set forth the rights of non-believers and made a clear distinction between legal and illegal religious practices. The standards of protection under such an instrument must not, however, fall below the standards already set in the Declaration and there was no reason why they should not go beyond it.

18. With regard to measures that might promote religious tolerance, his Government, which was a contributor to the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, welcomed the Special Rapporteur's suggestion that such services should be made available to those countries desiring to draft new legislative provisions or to bring existing legislation into line with the standards of international instruments. His delegation also agreed with the Special Rapporteur that efforts should be made to help non-governmental organizations, including those representing specific religions and ideologies, to strengthen their national and international contributions to the common task of eradicating religious intolerance.

19. Mr. BOSSUYT (Belgium) said that the report on religious intolerance (E/CN.4/1990/46) clearly showed that the question had become, if anything, even more topical.

20. His delegation joined the Special Rapporteur in welcoming the positive impact of the policy of openness and transparency in the sphere of religious freedom and manifestations of worship in Eastern Europe.

21. It was also encouraging that 17 States had replied to the communications transmitted to them by the Special Rapporteur in 1989. Some of those replies

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were hardly satisfying, however, and it was to be hoped that the Special Rapporteur would, if necessary, return to them in future reports. Even less satisfying was the absence of replies from the 12 States referred to in paragraph 93 of the report. It was to be hoped that those States would be able to transmit their replies for the next report.

22. With regard to the particular problems faced by certain religious sects, such as Jehovah's Witnesses and the International Association of Scientologists, a more thorough analysis of those problems in a future report would be welcome.

23. As to the reference to the fact that many newer sects and religious associations seemed to engage in activities that were not always of a legal nature (para. 110), a distinction must be made between legal provisions that were in keeping with the Declaration and those that were not. It was important to determine whether the activities in question were compatible not with domestic law but with international law as set forth in article 18 of the International Convention on Civil and Political Rights.

24. His delegation fully agreed with the Special Rapporteur that the Declaration protected not only religious but also theistic, non-theistic and atheistic beliefs (para. 110) and that the rights of non-believers should be properly guaranteed in a new international instrument (para. 113). It had serious reservations, however, about the principle of reciprocity, the absence of which might be used as an excuse not to comply with international obligations in the field of human rights.

25. His delegation agreed with the conclusions reached by Mr. van Boven (E/CN.4/Sub.2/1989/32), on the need to draft a further binding international instrument on freedom of religion or belief, and that it was necessary first of all to complete the serious preparatory work that took the opinions of Governments duly into account and was accompanied by consultation and dialogue among interested groups, organizations and movements from across a broad socio-political and religious spectrum. While a new instrument must be consistent with existing standards and raise the level of protection, the issue of implementation merited further thought.

26. Such an instrument might well take the form of a third optional protocol to the International Covenant on Civil and Political Rights. That would prevent an inflationary proliferation of instruments to monitor respect for international obligations in the field of human rights.

27. In view of the importance of the problems posed by religious intolerance, his delegation was in favour of extending the mandate of the Special Rapporteur for five years.

28. Mr. GIBSON (Commission of the Churches on International Affairs) said that intolerance based on religion and belief led to the violation of many other universally accepted rights. The problem could not be treated in isolation, because the right to religious freedom was inseparable from other basic human rights. Religious faith must not be used to justify violating the rights of others. Pending a convention on religious freedom, it was essential to ensure respect for existing international instruments, in particular the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

29. Religious belief found expression in many different social and political forms, and conflicts between groups within societies or between religious organizations and Governments might best be resolved through dialogue. In that context, his organization had been struck by the recent bill introduced in Singapore on religious harmony, which had placed restrictions on freedom of religious expression and belief.

30. Meeting in June 1987, the Human Rights Advisory Group of the World Council of Churches had concluded that, although gaps and weaknesses existed, the existing standards were adequate. His delegation welcomed the paper prepared by Mr. van Boven (E/CN.4/Sub.2/1989/32); clearly, a number of issues must be thought through before work on a convention on religious freedom began.

31. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination) said that the monotheistic religions which had originated in the Middle East called for justice and equality for all, but had at times been interpreted for political purposes. In Israel, the State used the religion on which it was based in order to discriminate against more than 750,000 non-Jewish inhabitants. Dr. Roselle Tekiner, an authority on the subject, had described how, in Israel, the unique distinction made between citizenship and nationality (confined to the "Jewish people"), together with the lack of a constitution or bill of rights, contradicted the contention in the Proclamation of the Establishment of the State, which in any case had no legal force, that all citizens were equal.

32. An excellent example of Israel's discrimination against non-Jewish citizens was the systematic destruction of Arab villages and houses. He had submitted, with his statement, a list of 47 Arab villages which the authorities planned to destroy; such villages could thus suffer the fate of Emmaus, a symbolic site for Christians the world over, which had been bulldozed in 1968 and the inhabitants expelled. In addition, Israel's action pursuant to the Jews' religious claim that Palestine had been given to them as the "Chosen People" meant that Palestinians had no recourse but to the United Nations for justice.

33. In Bulgaria, the new Government had restored the rights of Muslims, although many Bulgarians still called for the continuation of anti-Muslim repression. As pointed out in an article in the Montreal Gazette of 9 January 1990, nationalist Bulgarians should be told that minority and individual rights were not things to be determined by a majority vote, and that democratic freedoms were for everyone, not just the majority.

34. Mr. ILIOPOULOS (Observer for Greece), speaking in exercise of the right of reply, said that his delegation valued the NGOs' contribution to the Commission's work, and thanked the speaker for the Minority Rights Group for his reference, the previous day, to the situation of ethnic Greeks living in some of Greece's neighbouring countries. With reference to other aspects of his statement, the Greek delegation undertook to provide the Group with details relating to particular events and relevant treaties, including clarifications regarding certain religious groups.

35. Mr. DEMIRALP (Observer for Turkey), speaking in exercise of the right of reply, thanked the representative of the Minority Rights Group for having drawn attention to the situation of legally-recognized ethnic Turkish minority groups in some Balkan countries, whose problems could be solved only through

strict observance of moral and contractual obligations by the countries concerned, including respect for the ethnic, religious and cultural identity of such groups. Turkey would continue to comply with the relevant provisions of the Treaty of Lausanne with regard to the treatment of all minority groups.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (E/CN.4/1990/12, 13, 15, 16, 17 and Add.1; E/CN.4/Sub.2/1989/28, 29/Rev.1; E/CN.4/Sub.2/1988/28 and A/44/708)

36. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 10, said that the United Nations had some substantial achievements to its credit in setting standards for the protection of individuals against the exercise of State power through police and judicial systems. With reference to the sub-item on torture and other cruel, inhuman and degrading treatment or punishment, he drew attention to the Special Rapporteur's report (E/CN.4/1990/17 and Add.1) and to Commission resolution 1988/30, by which the mandates of rapporteurs on thematic issues had been extended for two years.

37. Torture was one of the most deplorable of all human rights violations. Rapid, determined action was essential to end that abhorrent practice, which unfortunately was still prevalent; the United Nations viewed that task as one of its highest priorities.

38. The General Assembly, by establishing the United Nations Voluntary Fund for Victims of Torture (resolution 36/151), had recognized that, without lessening its struggle to eliminate torture, the world community should assist the victims of torture and their families. Reports on the Fund were before the Commission in documents A/44/708 and E/CN.4/1990/16.

39. The Commission had before it a report by the Secretary-General (E/CN.4/1990/15) which provided information on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It had currently been ratified or acceded to by 50 States, and signed by 22, the latest accession being that of Guatemala on 5 January 1990. In addition, 23 States parties had made the declarations provided for in articles 21 and 22 of the Convention; one State party had made only the declaration provided for in article 21.

40. The Committee against Torture had held its second and third sessions at Geneva in April and November 1989 and had submitted its annual report, covering its second session, to the States parties to the Convention, and to the General Assembly at its forty-fourth session, in accordance with article 24 of the Convention. In accordance with article 17, the Second Meeting of the States parties had re-elected the five members of the Committee whose terms of office were due to expire on 31 December 1989 for a four-year term beginning 1 January 1990.

41. He drew attention to the Committee's measures, which had been welcomed by the General Assembly in its resolution 44/144, including an effective reporting system on States parties' implementation and an exchange of views between the Committee and the Commission's Special Rapporteur. The General Assembly had also reiterated its request for all States to become parties to the Convention as a matter of priority and to consider the possibility of making the declarations provided for in its articles 21 and 22. In January 1990, the Secretary-General had transmitted to the States parties, in accordance with a decision taken at their Second Meeting, the assessment notices concerning the total budget implications on the Convention's implementation for the financial period from 1 January to 31 December 1990.

42. The report of the Working Group on Enforced or Involuntary Disappearances was before the Commission (E/CN.4/1990/13). In addition to the methods of work described in the reports to the Commission at its two previous sessions, the Working Group had decided to remind Governments twice yearly of all urgent cases transmitted during the preceding six months for which no clarification had been received.

43. The Working Group had taken into account the comments made by the representatives of Member States during the Commission's forty-fifth session when considering specific matters relating to its methods of work, and had decided to transmit to the Governments concerned all allegations received about disappearances in their countries, inviting them to comment thereon if they so wished.

44. The Working Group had also examined the draft declaration, prepared by the Sub-Commission's sessional Working Group on Detention, on the protection of all persons from enforced or involuntary disappearances. The Working Group would also consider, at its first working session of 1990, invitations to visit El Salvador and Sri Lanka and would then communicate with those countries' Governments accordingly; but a visit to the Philippines originally scheduled for Janaury 1990 had been postponed, since the Working Group had felt, given the prevailing circumstances, that a later date would be better.

45. The question of human rights in the administration of justice and in relation to detention had long been deemed one of the most important aspects of human rights; many international and regional instruments contained detailed provisions relating to the treatment of detainees and to basic rules for the administration of justice. The General Assembly, the Commission and the Sub-Commission had always felt the need to pay special attention to such matters; and the Sub-Commission had played a major role in drawing the attention of the Commission and the Assembly to cases of abuse, such as enforced or involuntary disappearances. The Sub-Commission's sessional Working Group on Detention had decided to give maximum priority in 1990 to work on the draft declaration on protection from enforced or involuntary disappearances.

46. The Sub-Commission had also been giving close attention, for a number of years, to the question of human rights and states of emergency; in its resolution 1989/28 it had expressed its satisfaction at its Special Rapporteur's third annual report on that question and had invited him to continue the work. Other items on the Sub-Commission's agenda with respect to which further international standards might be desirable were: the

investigation of cases of suspicious deaths in detention, restraints on the use of force by law enforcement and military personnel, and compensation for victims of gross violations of human rights.

47. The effectiveness of action by the United Nations and its specialized agencies in promoting peace, development, emergency relief and humanitarian assistance in many parts of the world depended in large measure on the commitment, dedication and skills of international civil servants. Any impediment to the performance of their functions or failure to respect the exclusively international character of the responsibilities of the Secretary-General and his staff, as agreed by the Member States in article 100, paragraph 2 of the Charter, could seriously affect the Organization's functioning.

48. Reports such as that of the killing of Lieutenant-Colonel Higgins, who had been kidnapped while on official duty in the Middle East, caused deep concern throughout the Organization. The Commission and Sub-Commission alike had dealt with the detention, disappearance and death of United Nations staff members. The Commission, in its resolution 1989/28, had requested the Secretary-General to continue his efforts to ensure that the human rights, privileges and immunities of United Nations staff members and experts, and their families, were fully respected. In some cases, the pertinent authorities had responded positively to the Secretary-General's efforts; but in others, unfortunately, no progress could be reported.

49. The Commission would have before it the Secretary-General's updated report (E/CN.4/1990/14), on the situation of international civil servants and their families detained, imprisoned, missing or held in a country against their will, including the cases that had been successfully settled during the five years preceding the Commission's forty-fifth session.

50. The Sub-Commission, at its forty-first session, had invited one of its members, Mrs. Bautista (Philippines), to submit to it, at its next session, proposals for practical measures to ensure that United Nations staff members were protected. One case of relevance to the Sub-Commission was that of Mr. Mazilu, Special Rapporteur on human rights and youth. The International Court of Justice had unanimously expressed the view that article VI, section 22 of the Convention on Privileges and Immunities of the United Nations was applicable to Mr. Mazilu in his capacity as Special Rapporteur of the Sub-Commission; that view applied, mutatis mutandis, to all other United Nations officials with similar mandates.

51. Mr. KOOIJMANS (Special Rapporteur to Examine Questions relevant to Torture) said that the fight against torture and other cruel, inhuman or degrading treatment or punishment at the level of the organized world community was in its fifteenth year and the efforts made and results obtained appeared impressive. A number of instruments had been adopted and mechanisms had been established to eradicate that evil. Torture had been formally criminalized; an increasing number of States parties to the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had committed themselves to prosecuting and trying any person who had perpetrated torture.

52. The world community had not only committed itself to repressing torture and to punishing those who violated the prohibition against torture; it had also committed itself to preventing torture. Indeed, if all States heeded the principles embodied in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, set forth in the General Assembly resolution 43/173, torture would be a rare phenomenon.

53. Great progress, therefore, had been made in the legal and institutional fields. However, the picture was less reassuring in terms of actual practice. It could not be denied that recent developments in all parts of the world had kindled the hope that, in the future, the world would take human rights more seriously than it had done in the past decade. Nor could it be denied that the systematic use of torture practised by régimes in power or condoned by them had decreased. The information in his report, however, was clear evidence that a change of political will was not sufficient to do away with torture.

54. A society tainted by the evil of torture could not be expected to change overnight. Torture was not an isolated phenomenon and, consequently, the fight against it could be successful only if it was recognized that torture emanated from other human rights violations. He had become increasingly convinced that the best preventive measure against torture was strict compliance with the provisions of human rights instruments dealing with the rights of detainees. Respect for the rights contained in articles 9, 10 and 11 of the Universal Declaration and in articles 9, 10 and 14 of the International Covenant on Civil and Political Rights was an indispensable prerequisite for the eradication of torture.

55. It was of particular importance that those principles should apply to all kinds of detention or imprisonment. Although administrative detention, detention without charge or trial, seemed to be ruled out by article 9 of the Covenant, it was still a common phenomenon and it was precisely during such detention that torture was alleged to be practised regularly. A passive judiciary, and a Prosecutor's office which did not function properly were usually at the roots of torture, since it was practised most often during illegal detention or during detention under illegal conditions.

56. Therefore, he had highlighted in the concluding chapter of his report (E/CN.4/1990/17, chapter V) the importance of the Body of Principles and had made a thorough study of the legal provisions regarding arrest and detention prevailing in the countries he had visited, focusing his recommendations on such issues. During the past year, he had found such visits for consultation with Governments and professional and non-governmental organizations extremely useful and expressed his sincere appreciation to the Governments of Guatemala, Honduras and Zaire for their invitations and for their organization of his visits. He was also grateful for the information provided by the Governments of the Republic of Korea and Turkey on the measures taken in relation to the recommendations made by him following his visits to those countries in 1988.

57. He had recently received an invitation from the Government of the Philippines to visit that country in the course of the current year. If his mandate was extended, he would certainly accept that invitation and give an account of the visit in his next report. He wished to repeat what he had said

in his report that such an invitation should not be seen as an admission that torture was practised in the country concerned, since the main purpose of such a visit was the prevention of torture.

58. Since the completion of the current report, in mid-December 1989, several urgent appeals had been sent to Governments requesting them to ensure on humanitarian grounds that the right to physical and mental integrity of certain persons were protected. Seven Governments had provided detailed replies to allegations submitted to them, either through the urgent action procedure or by letter. It should be noted that only substantive replies were reflected in the report, as distinct from replies which merely acknowledged receipt of a communication.

59. Summing up the contents of the replies, he said that the reply by Bahrain concerned allegations referred to in paragraph 27 of the report. The Government affirmed that the allegation of torture had been flatly refuted after a thorough medical check-up and investigation.

60. The reply by the Government of China to an urgent appeal, which appeared in paragraph 44, described the riots which had broken out in Lhasa in March 1989 and affirmed that following an investigation, it had been concluded that no person by the name of Tseten Norgye was found among those in prison in connection with the riots.

61. The Ethiopian Government's reply to allegations reflected in paragraph 65 of the report stated that it had investigated them and found them to be unfounded and baseless. The Government had also provided legal texts including excerpts from the Constitution and Penal Code which prohibited torture and ill-treatment of prisoners.

62. The Government of Greece had provided further information on a case transmitted to it in July 1988, for which it had furnished the first elements of a reply, as reflected in paragraph 66 of the report. According to the Government, the adminstrative inquiry concerning the case had been concluded and no findings of guilt against policemen had been established.

63. The Government of Guinea had replied to an urgent appeal contained in paragraph 73 of the report concerning seven persons. It said that the first four names were unknown and that the other three persons had been released.

64. The Haitian Government's reply to the appeal appearing in paragraph 77 concerning three well-known trade unionists or politicians stated that they had been brought before a judge on 3 November 1989 and taken to a military hospital on 17 November 1989 to be given medical treatment, necessitated by the state of their health.

65. The detailed replies of the Government of Turkey to allegations contained in urgent appeals and letters contained in paragraphs 154, 157, 161 and 162 of the report would be duly reflected in his next report, but it could already be said that the Government had provided ample details on the background and circumstances of the arrest of the persons whose cases were transmitted and that it denied the torture and ill-treatment allegations. With regard to the persons mentioned in paragraph 161, the Turkish Government had provided a copy of a reply sent to the Special Rapporteur on summary or abitrary executions explaining the circumstances of their deaths.

66. Considerable progress had been made in the standard-setting and monitoring field. However, what was missing was the bridging of the gap between the formal prohibition of torture at the international and national levels and its banishment from daily life. He stressed that every Government was under an obligation to examine its society so as to locate the weak spots, identify the deficiencies and apply the appropriate therapies.

67. Mr. TOSEVSKI (Chairman/Rapporteur of the Working Group on Enforced or Involuntary Disappearances), introducing the report of the Working Group (E/CN.4/1990/13), said that it constituted a milestone for the Commission, in that the establishment of the Group 10 years previously had marked the beginning of the Commission's "thematic" or "issue-oriented" approach to human rights violations. It was also a milestone because the Commission had, in the course of a decade, successfully nurtured a mechanism that allowed private individuals to come and seek help from the United Nations directly in their efforts to find out what had happened to missing parents, spouses or children and thus put an end to the devastating uncertainty that had been besetting their lives. In other words, the Commission had sustained the development of a practice which could be followed with regard to other human rights concerns as well.

68. Despite the Commission's efforts, the phenomenon of disappearances was very much alive. The total number of cases processed by the Group since 1980 was in excess of 19,000 and the number of cases for 1989 was almost twice as high as those for 1988. In addition, there were many cases of which the Working Group was never informed at all.

69. Since 1985, the Working Group had submitted separate reports to the Commission on the results of visits undertaken to one country or another. The current report had no such addenda. Although one visit had been scheduled to take place in January 1990, the Group had decided to postpone it for reasons that would be found in the main report.

70. The Working Group had devoted more space than usual to its "concluding observations" (paras. 337 to 365). It had tried to highlight a number of aspects of disappearances and had done so with regard to the problem itself and the approach it had adopted.

71. A number of recommendations for action by the Commission had been included in the "concluding observations". One of those recommendations, which deserved to be underlined was contained in paragraph 343, and concerned the harassment of witnesses and relatives. As stated in earlier reports, the Working Group was increasingly confronted with cases where relatives of missing persons were themselves the victims of persecution. That was an extremely disturbing feature, since those people - mainly women - had already been victimized by the loss of a spouse or a child and thus belonged to a vulnerable group, economically, socially and emotionally. Many of those relatives were subjected to various forms of hardship, some of them disappearing or being killed.

72. In conclusion, he assured the Commission that the Working Group was prepared to continue with its duties. The phenomenon of disappearances still persisted and the Commission might therefore consider the possibility of extending the Working Group's mandate to four years instead of two years.

73. Mr. BALIAN (Human Rights Advocates) said that his organization noted with concern the continuing practice among developed as well as developing countries of detaining asylum-seekers and even refugees, often without justification and for unduly prolonged periods. With respect to the guidelines for detention of refugees and asylum-seekers, the High Commissioner for Refugees had noted in his annual report (E/1989/64, para. 36) that the relevant qualifications had had little impact on the practices of States in that field and that, on the contrary, detention under harsh conditions, for long periods and without justifiable cause, continued to prevail in a number of countries. His organization suggested that the question should be examined by the Sub-Commission's Working Group on Detention.

74. In Hong Kong and South-East Asia alone, the practice accounted for the prolonged and indefinite detention of more than 100,000 Vietnamese boat people and approximately 300,000 Cambodian displaced persons. In Hong Kong, once Vietnamese asylum-seekers were denied refugee status, they were detained under the authority of an executive order without recourse to any tangible judicial review. In addition, Hong Kong correctional service officers and police had been alleged to have ill-treated detained Vietnamese and to have used inordinately harsh disciplinary measures.

75. His organization also noted with grave concern the use of force by law enforcement officials in the repatriation of Vietnamese boat people from Hong Kong and the lack of public assurances by Viet Nam, guaranteeing the protection of boat people forcibly returned to that country. Viet Nam maintained criminal prohibitions against illegal departure and had declared publicly its opposition to forcible return and its intent to punish those who did not choose to return voluntarily.

76. In Thailand, some 300,000 Cambodian refugees were required to live in sites along the Thai-Cambodian border. They remained without the right of entry or exit and without international protection. Thai authorities permitted the Khmer Rouge forces to control some of the refugee camps, where they imposed harsh punishment on those who attempted to escape.

77. Those and other incidents of administrative detention of refugees, asylum-seekers and displaced persons in Hong Kong and South-East Asia and similar practices in other parts of the world constituted violations of human rights and fundamental freedoms recognized under the various relevant international documents. The use of detention to deter asylum-seekers from seeking shelter in a potential country of asylum was unlawful and wholly inconsistent with international standards for the protection of refugees.

78. His organization urged the Commission to invite Mr. Joinet to supplement his report (E/CN.4/Sub.2/1989/27) by a study on administrative detention measures throughout the world relating to the status of aliens and, in particular, asylum-seekers, refugees and displaced persons; to request the Secretary-General to ask Governments, non-governmental organizations, intergovernmental organizations and other concerned bodies to submit comments regarding forcible repatriation; and to appeal to all Governments concerned to respect their obligations under international law with respect to aliens in administrative detention.

79. With regard to detention conditions and the practice of torture in Turkey, he said that over the past nine years, more than 250,000 political prisoners had been detained in Turkey, most of whom had been tortured. While fewer persons had been detained on political grounds in recent years and, therefore, allegations of torture had declined, there had been no significant change in the pattern of torture during detention in Turkey.

80. His organization wished to submit to the Commission a comprehensive report it had prepared on continuing human rights violations in Turkey, in particular the practice of torture. Copies of the report would be made available to participants in the current session of the Commission.

81. Mrs. Regazzoli (Argentina) took the Chair.

82. Mr. NOORANI (India) said it was a sad and disturbing fact of life that, despite the existence of international standards and national laws, incidents of torture and other cruel, inhuman or degrading treatment occurred in various parts of the world, as did enforced or involuntary disappearances.

83. As pointed out by the Special Rapporteur on questions relevant to torture, the number of allegations submitted to Governments should not be taken as an indication of the extent to which torture was practised in those countries. The number of allegations received with regard to a particular country was determined not only by the human rights situation there, but also by other factors, such as the degree of public awareness and the presence of human rights monitoring organizations. Accordingly, the information received with regard to a particular country might be so incomplete that it was impossible to transmit it to the Government concerned.

84. It was the duty of Governments to take seriously the allegations conveyed to them by the Special Rapporteur and the Working Group on Enforced or Involuntary Disappearances and to furnish correct information in that regard. If the allegations proved to be correct, Governments were required to take action against those found guilty.

85. For its part, his Government had always extended the utmost co-operation to the Special Rapporteur and the Working Group. It had already forwarded its replies concerning some of the cases referred to it, and would respond to the others as soon as possible. Because of India's size and federal structure, it sometimes took longer to obtain information than would be the case in smaller countries. However, all cases referred to his Government received priority attention.

86. The Special Rapporteur had repeatedly emphasized that torture was not an isolated phenomenon, but was inextricably linked to other human rights violations and the absence of the rule of law. In his delegation's view, effective safeguards against torture and other types of human rights violations must be based on respect for the rule of law and the dignity of the human person.

87. The right to life and personal liberty was one of the fundamental rights guaranteed by the Indian Constitution, article 21 of which provided that no person should be deprived of life or personal liberty except according to the procedure established by law. As a result of a constitutional amendment, that

right could not be suspended even during an emergency. His country's deep commitment to democracy and the rule of law were as important as the law itself. A free, investigative press and assertive public opinion reinforced the legal safeguards.

88. The law authorized a police officer to use force to quell grave public disorder, but prohibited him from using more than the minimum force required to deal with the situation. The use of disproportionate force was unlawful and rendered an officer liable to investigation and punishment. If a person died in police custody, the law mandated an independent inquiry by a magistrate into the cause of death. When such an inquiry was held, the magistrate was required to inform the relatives of the deceased and allow them to be present during the proceedings.

89. His Government strongly condemned any use of torture by police authorities anywhere in the world. Of course, despite legal safeguards, lapses did occur, especially in prison. Prison reform was, therefore, an essential prerequisite for the eradication of the scourge of torture. The remedy consisted of inculcating in the police a respect for human rights, perfecting legal safeguards and strengthening the commitment to human rights of all branches of society.

90. It was the weakest sectors of society - the poor and underprivileged - who needed the greatest degree of legal protection to ensure that their human rights were respected. In his country, for historical, social and economic reasons, the scheduled castes and scheduled tribes were considered to be the weaker sectors, and his Government was deeply conscious of the fact that their human rights needed greater protection than those of the more privileged sectors of society.

91. To that end, the Indian Parliament had enacted new legislation which had entered into force in 1989. It defined a broad range of atrocities from which members of those groups had traditionally suffered and required State Governments to implement important new safeguards to prevent their recurrence. It also recommended that legal aid and compensation be provided to the victims of atrocities.

92. Mr. WERNER (International Association for the Defence of Religious Liberty) said that the motives which drove some men, and also, unfortunately, political authorities, to cause suffering to other human beings whom they held in their power, remained obscure. Great writers throughout the ages - including Sophocles, Montesquieu and Tolstoy - had affirmed that the capacity to feel compassion for the suffering of others constituted the essence of humanity. As the year 2000 approached, killing and cruelty were rampant, taking the form of military violence, terrorism stemming from allegedly religious motives, torture and hostage-taking. It was a disgrace to the international community, and a sign of its cowardice, that such phenomena had not yet been eradicated.

93. Hostage-taking destroyed the fabric of civilization, in terms of the obligation to protect travellers, guests and passers-by, to respect their integrity and freedom, and to refrain from all attempts at intimidation or blackmail of defenceless persons. Hostage-takers - whoever they might be and

however high their station - were equal in dishonour to the greatest criminals in history. To accept them as an inevitable evil would be to abandon all hope for the future. To negotiate with them would be to insult the human heritage for which all were jointly responsible.

94. Such statements could not help but conjure up the tormented situation in the Middle East, particularly the wretched fate of so many prisoners of war, not to speak of Beirut, where massacres were a daily occurrence. There was also the ordeal of the Western hostages who had been detained for so many months and even years. He could not forget that two of his compatriots were among them. While attempting to assuage suffering, they had been torn away from their work and plunged into unending captivity.

95. He welcomed the adoption of Commission on Human Rights resolution 1989/26 and other resolutions on hostage-taking, which should be widely publicized to galvanize international opinion.

96. Mr. DUHS (Sweden), referring to the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1990/17 and Add.1), said that it was reassuring to note the increase - to 49 - in the number of States which, by the end of 1989, had ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

97. At its forthcoming session, the Committee Against Torture would continue its role of supervising the implementation of the Convention. In the past, his delegation had regretted the fact that a number of States parties had made reservations concerning the competence of the Committee to receive and consider communications from individuals, although that was in accordance with the provisions of the Convention. He again urged States parties to consider making the declaration provided for in article 22 of the Convention, and welcomed the fact that 23 States had already done so.

98. His Government attached great importance to the United Nations Voluntary Fund for Victims of Torture. It had contributed to the Fund since its establishment in 1981 and urged others to do likewise.

99. His delegation intended to submit draft resolutions on the status of the Convention Against Torture and on the Voluntary Fund for Victims of Torture, and hoped that those resolutions would, as in previous years, be adopted without a vote.

100. The Special Rapporteur had reached the bleak conclusion that torture was still a common phenomenon in the contemporary world. Instances of torture were far from exceptional, even where torture was not part of a system. The Special Rapporteur had tried to establish contacts with a number of Governments concerning allegations of torture or other cruel, inhuman or degrading treatment which had come to his attention. While some Governments had acted with commendable promptness and initiated proceedings against those responsible, the report indicated that a large number of Governments seemed to ignore the material forwarded to them or to take inadequate follow-up action.

101. Of the 26 Governments to which appeals had been made, only half had replied. Even some countries that were members of the Commission, like China and Somalia, had not responded. He urged all Governments which had not provided satisfactory replies to the Special Rapporteur's letters to co-operate fully.

102. He welcomed the visits of the Special Rapporteur to Guatemala, Honduras and Zaire, and believed that co-operation between Governments and the Special Rapporteur was most useful.

103. His delegation fully agreed with the emphasis given by the Special Rapporteur to the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, approved by the General Assembly in December 1988, and with his view that incommunicado detention should be prohibited.

104. It also agreed with the Special Rapporteur's recommendation that Governments should enact legal provisions prescribing that a person must be given access to a lawyer within 24 hours of arrest. Provided that they were complied with and strictly monitored, such provisions should act as an effective remedy against torture. The relatives of an arrested person should have the right to be informed, on request, within 24 hours of the arrest and the exact location of the premises at which the person was being held.

105. Turning to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13), he said that, over the past decade, the Working Group had transmitted some 19,000 cases to 41 Governments. In 1989, it had dealt with some 700 cases said to have occurred that year, nearly double the number of cases in 1988. That was a cause for serious concern, and the efforts of the international community to eradicate enforced or involuntary disappearances must be given a high priority.

106. The Commission should also continue to keep a close watch on developments concerning the harassment of witnesses and relatives, an increasing number of incidents of which had been reported by the Working Group.

107. It had also reported a lack of information concerning the follow-up actions taken by Governments on recommendations forwarded to them. His delegation urged the Governments concerned to co-operate and to do so promptly.

The meeting rose at 12.55 p.m.